

RECEIVED
SEP 24 1999

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

K-T Corporation
850 Elston Drive
Shelbyville, Indiana,

Respondent.

) Docket No. CAA-5-99-039
)
) Proceeding to Assess a
) Civil Penalty under
) Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is K-T Corporation (K-T), a corporation doing business in Indiana.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning at 40 C.F.R. Part 63, Subpart T (Subpart T).

5. The NESHAP for Halogenated Solvent Cleaning applies to owners and operators of any batch vapor solvent cleaning machine that uses any solvent containing perchloroethylene (CAS No. 127-18-4) in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent. 40 C.F.R. § 63.460(a) and (b).

6. The NESHAP, at 40 C.F.R. § 63.460(d), requires the owner or operator of each solvent cleaning machine subject to Subpart T that commenced construction on or before November 29, 1993, to achieve compliance with the regulations set forth in Subpart T no later than December 2, 1997.

7. The NESHAP, at 40 C.F.R. § 63.463(b), requires each owner or operator of an existing batch vapor solvent cleaning machine with a solvent air interface area greater than 1.21 square meters (13 square feet) to employ one of the control combinations listed in table 2 of 40 C.F.R. § 63.463(b).

8. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for NESHAP violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

9. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

10. The Administrator and the Attorney General of the

United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

11. Complainant incorporates paragraphs 1 through 10 of this complaint, as if set forth in this paragraph.

12. "Affected source" means the stationary source or the portion of the stationary source that is regulated by a relevant standard or other requirement established by section 112 of the Clean Air Act. 40 C.F.R. § 63.2.

13. "Batch cleaning machine" means a solvent cleaning machine in which individual parts or a set of parts move through the entire cleaning cycle before new parts are introduced into the solvent cleaning machine. 40 C.F.R. § 63.461.

14. "Commenced" means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction. 40 C.F.R. § 63.2.

15. "Construction" means the on-site fabrication, erection, or installation of an affected source. 40 C.F.R. § 63.2.

16. "Existing" means any solvent cleaning machine the construction of which was commenced on or before November 29, 1993. 40 C.F.R. § 63.461.

17. "Hazardous air pollutant" means any air pollutant listed pursuant to 42 U.S.C. § 7412(b). 42 U.S.C. § 7412(a)(6).

18. "Owner or operator" means any person who owns, leases, operates or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

19. "Person" means an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof. 42 U.S.C. § 7602.

20. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).

21. "Vapor cleaning machine" means a batch or in-line solvent cleaning machine that boils liquid solvent generating solvent vapor that is used as a part of a cleaning or drying cycle. 40 C.F.R. § 63.461.

22. K-T is a person as defined by 42 U.S.C. § 7602.

23. K-T is an owner and operator of a stationary source located at 850 Elston Drive, Shelbyville, Indiana (facility).

24. Since at least December 2, 1997, the facility has emitted or has had the potential to emit perchloroethylene (CAS No. 127-18-4).

25. Perchloroethylene (CAS No. 127-18-4) is a hazardous air pollutant as defined by 42 U.S.C. § 7412(a)(6).

26. K-T is an owner and operator of an existing batch vapor solvent cleaning machine at its facility (batch vapor solvent

cleaning machine).

27. Since at least December 2, 1997, the batch vapor solvent cleaning machine has used a solvent that contains perchloroethylene (CAS No. 127-18-4) in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

28. Since at least December 2, 1997, the batch vapor solvent cleaning machine was subject to the requirements of Subpart T.

29. K-T installed its batch vapor solvent cleaning machine in 1963.

30. K-T commenced construction of its batch vapor solvent cleaning machine on or before November 29, 1993.

31. The batch vapor solvent cleaning machine has a solvent air interface greater than 1.21 square meters (13 square feet).

32. The batch vapor solvent cleaning machine has a solvent air interface area of 3.16 square meters (34 square feet).

33. On December 1, 1998, K-T submitted an initial notification report required by 40 C.F.R. § 63.468(a) to the Indiana Department of Environmental Management for its existing batch vapor solvent cleaning machine (initial report).

34. As required by 40 C.F.R. § 63.463(b)(2)(i) and as specified in the initial report as its compliance approach, K-T selected the following control combinations for its batch vapor solvent cleaning machine: freeboard refrigeration device, reduced room draft and dwell.

35. In 1998, K-T consumed 79,093 pounds of halogenated

solvent that contained perchloroethylene (CAS No. 127-18-4) in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

Count I

36. Complainant incorporates paragraphs 1 through 35 of this complaint, as if set forth in this paragraph.

37. 40 C.F.R. § 63.463(a)(1)(ii) requires that each owner and operator of an existing batch vapor solvent cleaning machine design and operate the cleaning machine to reduce room draft, as described in 40 C.F.R. § 63.463(e)(2)(ii).

38. From December 2, 1997 to June 23, 1999, K-T failed to ensure that its existing batch vapor solvent cleaning machine was designed and operated to reduce room draft as described in 40 C.F.R. § 63.463(e)(2)(ii).

39. K-T's failure to ensure that its existing batch vapor solvent cleaning machine was designed and operated to reduce room draft as described in 40 C.F.R. § 63.463(e)(2)(ii) constitutes a violation of 40 C.F.R. § 63.463(a)(1)(ii).

40. K-T's violation of 40 C.F.R. § 63.463(a)(1)(ii) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count II

41. Complainant incorporates paragraphs 1 through 40 of this Complaint, as if set forth in this paragraph.

42. 40 C.F.R. § 63.463(d)(1)(ii) requires each owner or operator of an existing batch vapor solvent cleaning machine to

control air disturbances across the cleaning machine openings by reducing the room draft, as described in 40 C.F.R.

§ 63.463(e)(2)(ii).

43. From December 2, 1997 to June 23, 1999, K-T failed to control air disturbances across its existing batch vapor solvent cleaning machine openings by reducing the room draft, as described in 40 C.F.R. § 63.463(e)(2)(ii).

44. K-T's failure to control air disturbances across its existing batch vapor solvent cleaning machine openings by reducing the room draft as described in 40 C.F.R.

§ 63.463(e)(2)(ii) constitutes a violation of 40 C.F.R.

§ 63.468(d)(1)(ii).

45. K-T's violation of 40 C.F.R. § 63.463(d)(1)(ii) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count III

46. Complainant incorporates paragraphs 1 through 45 of this Complaint, as if set forth in this paragraph.

47. 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(a) require each owner or operator of a batch vapor solvent cleaning machine to conduct monitoring and record the results on a weekly basis for the control devices being used to comply with 40 C.F.R. § 63.463.

48. 40 C.F.R. § 63.466(a)(1) requires each owner and operator using a freeboard refrigeration device to comply with the standards of 40 C.F.R. § 63.466, to use a thermometer or

thermocouple to measure the temperature at the center of the air blanket during the idling mode.

49. From December 2, 1997 to June 23, 1999, K-T failed to conduct monitoring and record the results on a weekly basis for its freeboard refrigeration device in accordance with 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(a)(1).

50. K-T's failure to conduct monitoring and record the results on a weekly basis for its freeboard refrigeration device constitutes a violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(a)(1).

51. K-T's violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(a)(1) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count IV

52. Complainant incorporates paragraphs 1 through 51 of this Complaint, as if set forth in this paragraph.

53. 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(b) require each owner or operator of a batch vapor solvent cleaning machine to conduct monitoring and record the results on a monthly basis for the control devices being used to comply with 40 C.F.R. § 63.463.

54. 40 C.F.R. § 63.466(b)(2) requires each owner and operator using a dwell to comply with the standards of 40 C.F.R. § 63.463, to determine the actual dwell time by measuring the period of time that parts are held within the freeboard area of the solvent cleaning machine after cleaning.

55. From December 2, 1997 to July 13, 1999, K-T failed to conduct monitoring and record the results on a monthly basis for the dwell in accordance with 40 C.F.R. § 63.466(b)(2).

56. K-T's failure to conduct monitoring and record the results on a monthly basis for the dwell constitutes a violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(b)(2).

57. K-T's violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(b)(2) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count V

58. Complainant incorporates paragraphs 1 through 57 of this Complaint, as if set forth in this paragraph.

59. 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(c) require each owner or operator of a batch vapor solvent cleaning machine complying with the equipment standards in 40 C.F.R. § 63.463 to monitor the hoist speed, as described in 40 C.F.R. § 63.466(c)(1) through 40 C.F.R. § 63.466(c)(4).

60. From December 2, 1997 to June 23, 1999, K-T failed to monitor the hoist speed, as described in 40 C.F.R. § 63.466(c)(1) through 40 C.F.R. § 63.466(c)(4).

61. K-T's failure to monitor the hoist speed as described in 40 C.F.R. 63.466(c)(1) through 40 C.F.R. § 63.466(c)(4) constitutes a violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(c).

62. K-T's violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(c) subjects K-T to the issuance of an

Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count VI

63. Complainant incorporates paragraphs 1 through 62 of this Complaint, as if set forth in this paragraph.

64. 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(d) require each owner or operator of a batch vapor solvent cleaning machine complying with the equipment standards in 40 C.F.R. § 63.463, using a reduced room draft, to conduct monitoring of the reduced room draft and record the results, as specified in 40 C.F.R. § 63.466(d)(1) or 40 C.F.R. § 63.466(d)(2).

65. From December 2, 1997 to June 23, 1999, K-T failed to conduct monitoring of the reduced room draft and record the results, as specified in 40 C.F.R. § 63.466(d)(1) or 40 C.F.R. § 63.466(d)(2).

66. K-T's failure to conduct monitoring of the reduced room draft and record the results as specified in 40 C.F.R. § 63.466(d)(1) or 40 C.F.R. § 63.466(d)(2) constitutes a violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(d).

67. K-T's violation of 40 C.F.R. § 63.463(e)(1) and 40 C.F.R. § 63.466(d) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count VII

68. Complainant incorporates paragraphs 1 through 67 of this Complaint, as if set forth in this paragraph.

69. 40 C.F.R. § 63.463(e)(2) requires that each owner and

operator of a batch vapor solvent cleaning machine determine during each monitoring period whether each control device used to comply with the standards of 40 C.F.R. § 63.463 meets the requirements of 40 C.F.R. § 63.463(e)(2)(i) through 40 C.F.R. § 63.463(e)(2)(vii).

70. 40 C.F.R. § 63.463(e)(2)(i) requires that if a freeboard refrigeration device is used to comply with the standards of 40 C.F.R. § 63.463, the owner or operator ensure that the chiller air blanket temperature (in degrees Fahrenheit) measured at the center of the air blanket, is no greater than 30 percent of the solvent's boiling point.

71. 40 C.F.R. § 63.463(e)(2)(ii) requires that if a reduced room draft is used to comply with 40 C.F.R. § 63.463, the owner or operator comply with the requirements specified in 40 C.F.R. § 63.463(e)(2)(ii)(A) and 40 C.F.R. § 63.463(e)(2)(ii)(B).

72. 40 C.F.R. § 63.463(e)(2)(v) requires that if dwell is used to comply with 40 C.F.R. § 63.463, the owner or operator will comply with the requirements specified in 40 C.F.R. § 63.463(e)(2)(v)(A) and 40 C.F.R. § 63.463(e)(2)(v)(B).

73. From December 2, 1997 to July 13, 1999, K-T failed to determine during each monitoring period whether each of the applicable control devices met the requirements of 40 C.F.R. § 63.463 (e)(2)(i), 40 C.F.R. § 63.463(e)(2)(ii) and 40 C.F.R. § 63.463(e)(2)(v).

74. K-T's failure to determine during each monitoring period whether each of the applicable control devices met the requirements of 40 C.F.R. § 63.463 (e)(2)(i), 40 C.F.R.

§ 63.463(e)(2)(ii) and 40 C.F.R. § 63.463(e)(2)(v) constitutes a violation of 40 C.F.R. § 63.463(e)(2).

75. K-T's violation of 40 C.F.R. § 63.463(e)(2) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count VIII

76. Complainant incorporates paragraphs 1 through 75 of this Complaint, as if set forth in this paragraph.

77. 40 C.F.R. § 63.465(e) requires that each owner and operator of a source determine their potential to emit from all solvent cleaning operations using the procedures described in 40 C.F.R. § 63.463(e)(1) through 40 C.F.R. § 63.463(e)(3).

78. From December 2, 1997 to July 14, 1999, K-T failed determine its potential to emit from all solvent cleaning operations, as described in 40 C.F.R. § 63.465(e)(1) through 40 C.F.R. § 63.465(e)(3).

79. K-T's failure to determine its potential to emit from all solvent cleaning operations, as described in 40 C.F.R. § 63.465(e)(1) through 40 C.F.R. § 63.465(e)(3) constitutes a violation of 40 C.F.R. § 63.465(e).

80. K-T's violation of 40 C.F.R. § 63.465(e) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count IX

81. Complainant incorporates paragraphs 1 through 80 of

this Complaint, as if set forth in this paragraph.

82. 40 C.F.R. § 63.467(a) requires each owner or operator of a batch vapor solvent cleaning machine complying with 40 C.F.R. § 63.463 to maintain records in written or electronic form as specified in 40 C.F.R. § 63.467(a)(1) through 40 C.F.R. § 63.467(a)(1), for the lifetime of the machine.

83. 40 C.F.R. § 63.467(a)(3) requires that if a dwell is used to comply with 40 C.F.R. § 63.467 recordkeeping requirements, each owner or operator must maintain records of the tests required in 40 C.F.R. § 63.465(d) to determine an appropriate dwell time for each part or parts basket.

84. From December 2, 1997 to July 13, 1999, K-T failed to maintain records of the tests required in 40 C.F.R. § 63.465(d) to determine an appropriate dwell time for each part or parts basket.

85. K-T's failure to maintain records as required by 40 C.F.R. § 63.467(a) constitutes a violation of 40 C.F.R. § 63.467(a).

86. K-T's violation of 40 C.F.R. § 63.467(a) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count X

87. Complainant incorporates paragraphs 1 through 86 of this Complaint, as if set forth in this paragraph.

88. 40 C.F.R. § 63.467(b) requires each owner or operator of a batch vapor solvent cleaning machine complying with 40

C.F.R. § 63.463 to maintain records as specified in 40 C.F.R. § 63.467(b)(1) through 40 C.F.R. § 63.467(b)(4), either in electronic form or written form for a period of 5 years.

89. 40 C.F.R. § 63.467(b)(1) requires that the owner or operator of a batch vapor solvent cleaning machine maintain the results of control device monitoring as required under 40 C.F.R. § 63.466.

90. 40 C.F.R. § 63.467(b)(2) requires that the owner or operator of an existing batch vapor solvent cleaning machine maintain information on the actions taken to comply with 40 C.F.R. § 63.463(e) and 40 C.F.R. § 63.463(f).

91. From December 2, 1997 to June 23, 1999, K-T failed to maintain records as specified in 40 C.F.R. § 63.467(b)(1) and 40 C.F.R. § 63.467(b)(2).

92. K-T's failure to maintain records as required by 40 C.F.R. § 63.467(b)(1) and 40 C.F.R. § 63.467(b)(2) constitutes a violation of 40 C.F.R. § 63.467(b).

93. K-T's violation of 40 C.F.R. § 63.467(b) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count XI

94. Complainant incorporates paragraphs 1 through 93 of this Complaint, as if set forth in this paragraph.

95. 40 C.F.R. § 63.468(a) requires each owner or operator of an existing batch vapor solvent cleaning machine subject to the provisions of Subpart T to submit an initial notification

report to the Administrator no later than August 29, 1995.

96. From August 29, 1995 to December 1, 1998, K-T failed to submit an initial notification report to the Administrator in accordance with 40 C.F.R. § 63.468(a).

97. K-T's failure to submit the initial notification report as required by 40 C.F.R. § 63.468(a) constitutes a violation of 40 C.F.R. § 63.468(a).

98. K-T's violation of 40 C.F.R. § 63.468(a) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count XII

99. Complainant incorporates paragraphs 1 through 98 of this Complaint, as if set forth in this paragraph.

100. 40 C.F.R. § 63.468(d) requires each owner or operator of an existing batch vapor solvent cleaning machine complying with the provisions of 40 C.F.R. § 63.463 to submit to the Administrator an initial statement of compliance for each solvent cleaning machine no later than 150 days after the specified compliance date of December 2, 1997.

101. From May 1, 1998 to July 14, 1999, K-T failed to submit an initial statement of compliance for its existing batch vapor solvent cleaning machine to the Administrator in accordance with 40 C.F.R. § 63.468(d).

102. K-T's failure to submit the initial statement of compliance as required by 40 C.F.R. § 63.468(d) constitutes a violation of 40 C.F.R. § 63.468(d).

of a batch vapor solvent cleaning machine to submit an exceedance report to the Administrator, once an exceedance occurs, on a quarterly basis until a request to reduce reporting frequency is approved.

110. From March 30, 1998 to July 14, 1999, K-T failed to submit exceedance reports to the Administrator on a quarterly basis.

111. K-T's failure to submit the exceedance reports required by 40 C.F.R. § 63.468(h) constitutes a violation of 40 C.F.R. § 63.468(h).

112. K-T's violation of 40 C.F.R. § 63.468(h) subjects K-T to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

113. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

114. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$87,150. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

115. Complainant developed the proposed penalty based on

the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

116. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

117. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

118. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Steven J. Murawski to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Murawski at (312) 886-6741. Mr. Murawski's address is:

Steven J. Murawski
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

Penalty Payment

119. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Steven J. Murawski and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

120. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 121 through 126 below.

Answer

121. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 117, above, and must serve copies of the written answer on the other parties.

122. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

123. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

124. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

125. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;

- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 120 above.

126. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

127. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Steven J. Murawski at the address or phone number specified in paragraph 118, above.

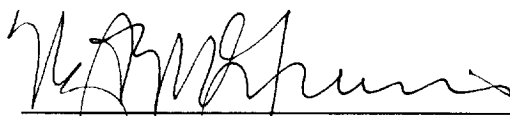
128. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty

simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

129. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

Sept. 23, 1999
Date



Margaret M. Guerriero
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (A-18J)
Chicago, Illinois 60604-3590

CAA-5-99-039

In the Matter of K-T Corporation
Docket No. **CAA-5-99-039**

RES

'99 SEP 24 P2:11

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the foregoing Administrative Complaint to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, " 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the complaint) by first-class, postage, prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Terry Martzall
Human Resource Manager
K-T Corporation
850 Elston Drive
Shelbyville, Indiana 46176

I also certify that copies of the Administrative Complaint were sent by first class mail to:

Felicia George, Assistant Commissioner
Office of enforcement
Indiana Department of Environmental Management
100 North senate, Room 1001
Indianapolis, Indiana 46206-6015

Phil Perry, Acting chief
Compliance Branch
Office of Air Management
Indiana Department of Environmental Management
100 North Senate, Room 1001
Indianapolis, Indiana 46206-6015

on the 24th day of September, 1999.

Betty Williams
Betty Williams, Secretary
AECAS (Section IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: F140 779 183